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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.902 OF 2001

Hemant Mhasu Aware)
Age 21 Years, Occ.: Labour)
R/o. Phule Nagar, Behind H/o.Smt.Ashatai)
Kardak, Panchavati, Nashik)
Dhule District Prison).. APPELLANT

VERSUS

The State of Maharashtra)
(At the instance of P.S.O., Panchavati)
Police Station, Nashik)).. RESPONDENT

Mr.Abhaykumar Apte for the Appellant.

Mrs.P.H. Kantharia, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 11TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The Appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to suffer life imprisonment as also to pay a fine of Rs.5,000/-. The Appellant has also been convicted for the offence punishable under Section 135 of the Bombay Police Act and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-. Both the sentences are to run concurrently.

2. The prosecution contends that the victim Anita had returned home to Nashik from Mumbai where she was

working as a maid servant. She had returned home to celebrate the Diwali festival. On 10th November 1999, between 7.00 and 7.30 p.m., Anita and her younger sister Tejashree went to their uncle, Nimba Pawar's house for observing the "bhaubeej" ceremony. The house of Nimba Pawar was at a distance of 150 to 200 feet from Anita's house. While returning home, the Appellant Hemant accosted Anita and insisted that she marry him. When Anita refused, the Appellant threatened that since she did not agree to marry him, she would not be able to marry anybody else. So saying, the Appellant stabbed Anita in the stomach with a knife. Anita's parents and NImba Pawar removed her to the hospital of PW7. She was directed to be taken to another hospital where better facilities were available so that proper treatment could be administered to her. She was, therefore, taken to the hospital run by PW8. However, PW8 directed her relatives to take Anita to the Civil Hospital, Nashik. On their arrival at the Civil Hospital, the Doctor who examined Anita, declared her dead. A complaint was lodged with the police station and an inquest panchanama and spot panchanama were drawn. Anita had informed her mother and the others who were taking her to the hospital that the Appellant had stabbed her since she refused to accede to his demand to marry him. The Appellant was therefore arrested. The blood stained knife was recovered from him. The Appellant was charged for having committed the murder of Anita. The case was committed to Sessions for trial.

3. The prosecution has examined fifteen witnesses. PW1 is the panch witness who has deposed regarding the seizure of the blood stained clothes and the knife from the Appellant. PW5 is the panch witness who has proved the spot panchanama. PW6 is also a panch witness, but this witness has turned hostile.

4. PW2 is the mother of the victim. She has deposed that on 10th November 1999, one Pappu Dhage informed her that her daughter Anita had been stabbed by the Appellant. This witness has stated that she knew the mother of the Appellant who was her colleague in the Home Guards. She has further stated that the Appellant's mother did not like Anita talking with the Appellant since they belonged to different communities. She has also deposed that when they learnt of the assault, she, her husband and children rushed to the spot. Then she, her husband and Nimba Pawar (PW12), her brother-in-law, who had rushed to her house, removed the victim to the hospital. On the way, the victim told her and the others that the Appellant had stabbed her in the stomach since she refused to marry him. This evidence of the mother of the victim has been corroborated by PW12. He has also spoken about the fact that the victim revealed to them that she was stabbed by the Appellant since she refused to marry him.

5. PW3 is the eleven year old sister of the victim. This witness had accompanied Anita to the house of PW12 for the bhaubeej ceremony. She has deposed that while returning home, the Appellant had stabbed her sister. This witness, therefore, is an eye witness and she has spoken about how the incident occurred. PW4 is another sister of the victim. She was informed of the assault by PW12. She has deposed that the victim had spoken to her about the Appellant's demand to marry him and that the victim had refused to marry the Appellant. This incident occurred during the Diwali of the previous year. Again, the Appellant repeated his demand on 10th November 1999 which the victim had narrated to PW4.

6. The prosecution has thus succeeded in proving that the Appellant had a motive for the assault on the victim. The assault has been witnessed by PW3. The victim has revealed to her mother, PW2 and PW12 that the Appellant had stabbed her in the stomach since she refused to marry him. Therefore, the prosecution has proved the assault on the victim by the Appellant.

7. Another circumstance which indicates that it is the Appellant who had stabbed the victim is the recovery of the knife from the back pocket of his trousers. This knife was blood stained. The blood stains have been analysed and the stains belonging to blood group "A". The blood of the victim has been analysed and it belonged to the same blood group. This, therefore, is a

clear indication that it is the Appellant who has assaulted the victim. Moreover, the clothes of the Appellant which were attached and sent for analysis indicate that they bear blood stains belonging to "A" group. Therefore, there can be no doubt that it is the Appellant who has assaulted the victim.

8. The medical evidence on record corroborates the ocular evidence. The post mortem report discloses that there are five cutting injuries on the chest, abdomen and the lower back of the deceased. The Doctor who conducted the post mortem has been examined as PW13. This witness has deposed that the death was on account of a shock due to haemorrhage of the visceral organs. He has opined that the knife which was attached could have caused the injuries on the deceased.

9. In our opinion, the prosecution has proved the incriminating circumstances against the Appellant. We have perused the impugned judgment and find that the learned Judge has marshalled the facts and appreciated the evidence in its proper perspective. Our independent scrutiny of the evidence leads us to the same conclusions that he has drawn. We, therefore, agree with the judgment of the trial Court and confirm the conviction and sentence.

10. The Appeal fails and is dismissed.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)